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17
18 UNITED STATES DISTRICT COURT
19 DISTRICT OF NEVADA

20 DILARAM KHANKHODJAEVA,

21 Plaintiff,

22 v.

23 SAXON MORTGAGE SERVICES, INC.;
24 QUALITY LOAN SERVICE CORP.; WELLS
25 FARGO BANK, N.A.; MORTGAGE
26 ELECTRONIC REGISTRATION SYSTEMS,
27 INC., and DOES 1-10,

28 Defendants.

Case No. 2:10-cv-01577-JCM-GWF

~~EX PARTE~~ MOTION FOR EXTENSION
OF TIME TO FILE RESPONSIVE
PLEADING PURSUANT TO FRCP 6(b)
AND LR 6-1 and 6-2

(First Request)

29 Defendant, SAXON MORTGAGE SERVICES, INC. (hereinafter "Saxon"), by and through
30 its counsel, PITE DUNCAN, LLP, respectfully submits this *ex parte* Motion, pursuant to FRCP 6(b)
31 and LR 6-1 and 6-2, requesting that this Court grant Saxon an extension of time of, ten (10) judicial
32 days, to file a responsive pleading to Plaintiff's First Amended Complaint, which was filed on June
33 24, 2011.


34 This Motion is based upon the fact that the undersigned counsel was only retained recently,
35 on August 29, 2011, the First Amended Complaint and attached exhibits is in excess of 400 pages,

1 and the Plaintiff has refused to grant the undersigned the courtesy of a short extension. It is
 2 respectfully submitted that there is good cause to enter an Order providing Saxon with a brief
 3 extension within which to file a responsive pleading, and that the Plaintiff will not suffer any
 4 prejudice as a result.

5 DATED this 1st day of September, 2011.

6 Respectfully submitted,

7 PITE DUNCAN, LLP

8 
 9 LAUREL I. HANDLEY
 10 GREGG A. HUBLEY
 11 MICHELE L. BARON
 Attorneys for Defendant SAXON MORTGAGE
 SERVICES, INC.

12 POINTS AND AUTHORITIES

13 I.

14 STATEMENT OF FACTS

15 A. Procedural History

16 The Plaintiff proffered the original Complaint on September 15, 2010, (Doc. #1), and on the
 17 same date she filed a Notice of Lis Pendens (Doc. #2). On January 14, 2011, the case was reassigned
 18 to the Honorable George W. Foley, Jr., U.S. Magistrate Judge for all further proceedings (Doc. #3).
 19 Plaintiff was granted leave to proceed in forma pauperis on March 14, 2011 (Doc. #4), and after this
 20 Honorable Court completed their screening of the original Complaint on May 24, 2011, Plaintiff was
 21 given leave to file an amended Complaint (Doc. #5). On June 24, 2011, Plaintiff filed the First
 22 Amended Complaint. Plaintiff served Saxon on July 28, 2011. No other party has filed an Answer
 23 or other responsive pleading in this matter.

24 It should also be noted that Plaintiff is in direct disobedience of this Court's Order dated June
 25 10, 2011, which required her to file, within ten (10) days from the issuance of the Order and in
 26 accordance with Local Rule 7.1-1, a Certificate of Interested Parties or a statement addressing such
 27 disclosing all persons, associations of persons, firms, partnerships, or corporations which have a
 28 direct pecuniary interest in the outcome of the case. See LR 7.1-1.

1 **B. Background**

2 The office of the undersigned was retained on Monday, August 29, 2011, and Saxon's
3 responsive pleading was due on Wednesday, August 17, 2011. Counsel for Saxon has attempted to
4 contact Plaintiff several times by telephone over the past two (2) days, leaving messages on
5 Plaintiff's voicemail that have not yet been returned. (See, Affidavit of counsel, attached hereto.)

6 **II.**

7 **LEGAL ARGUMENT**

8 FRCP 6(b) provides this Court with the discretion to grant Saxon a brief extension of time
9 to file a responsive pleading, and states:

10 (1) *In General.* When an act may or must be done within a specified time, the court
11 may, for good cause, extend the time:

12 (A) with or without motion or notice if the court acts, or if a request is made,
before the original time or its extension expires; or

13 (B) on motion made after the time has expired if the party failed to act
because of excusable neglect.

14 (2) *Exceptions.* A court must not extend the time to act under Rules 50(b) and (d),
52(b), 59(b), (d), and (e), and 60(b).

15 Federal District Court's are given "...broad discretion to expand filing deadlines[.]" under
16 FRCP 6(b). *Hetzel v. Bethlehem Steel Corp.*, 50 F.3d 360, 367 (5th Cir. 1995); *citing, Maldonado-*
17 *Denis v. Castillo-Rodriguez*, 23 F.3d 576, 583 (1st Cir. 1994); *Woods v. Allied Concord Financial*
18 *Corp.*, 373 F.2d 733, 734 (5th Cir. 1967).

19 Likewise, Local Rule 6-1 allows the Court to provide an extension, only requiring a
20 demonstration of excusable neglect when the request is made "...after expiration of the specified
21 period[.]" An *ex parte* Motion for an extension of time is governed by LR 6-2, which operates under
22 the same standards set forth in FRCP 6(b) and LR 6-1, and simply specifies the procedure to use
23 when requesting an extension of time requested by an *ex parte* Motion.

24 Although the deadline under which Saxon was to file a responsive pleading has expired,
25 Saxon just recently retained counsel and believes there is good cause to allow Saxon a brief
26 extension of time to file a responsive pleading. First, there have been no prior requests for an
27 extension. Indeed, no other party has filed any responsive pleading, either to the original or the First
28 Amended Complaint, and there are no pre-trial or other deadlines that have been implemented by

1 this Court. Consequently, the Plaintiff will suffer no prejudice by the granting of a short extension.
2 Additionally, the Plaintiff has seen fit to initiate and pursue this action in proper person with the
3 filing of a 420 page Complaint (including Exhibits), and it should be expected that some parties may
4 require additional time to respond to such a voluminous pleading. Plaintiff has been unresponsive
5 in Saxon's direct requests for a stipulated extension.

6 The office of the undersigned has only recently been retained, and has barely had an
7 opportunity to analyze the voluminous First Amended Complaint and its exhibits. The undersigned
8 has been unable discuss the allegations of the Complaint at length with Saxon to allow for the
9 preparation and filing of a responsive pleading. Neither Saxon nor the undersigned is seeking a brief
10 extension to delay these proceedings.


11 III.

12 CONCLUSION

13 Consequently, there is good cause to grant this *ex parte* request for an extension of time to
14 file a responsive pleading, and the undersigned respectfully requests that the Court allow an
15 additional ten (10) judicial days to prepare, file and serve a responsive pleading. Saxon's responsive
16 pleading is due to be filed and served, therefore, on or before Friday, September 16, 2011.

17 DATED this 1st day of September, 2011.

18 PITE DUNCAN, LLP

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20 LAUREL I. HANDLEY
21 GREGG A. HUBLEY
22 MICHELE L. BARON
Attorneys for Defendant SAXON MORTGAGE
SERVICES, INC.

23 ORDER

24 IT IS SO ORDERED.

25 DATED this 2nd day of September, 2011.

26 
27 GEORGE FOLEY, JR.
28 United States Magistrate Judge